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CHARLES ELMORE GROPLEY

**IN THE
SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, A. D. 1943.

**THE BROTHERHOOD OF RAILROAD TRAINMEN,
ENTERPRISE LODGE NO. 27, et al.,
Petitioners,**

vs.

**TOLEDO, PEORIA & WESTERN RAILROAD,
Respondent.**

**On Writ of Certiorari to the United States Circuit Court of
Appeals for the Seventh Circuit.**

**REPLY OF PETITIONERS TO ADDITIONAL
BRIEF OF RESPONDENT.**

**JOHN E. CASSIDY,
JOHN F. SLOAN, JR.,
STANLEY W. CRUTCHER,
Attorneys for Petitioners.**

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Respondent in its additional brief (p. 2) states that the record shows that the Brotherhoods "called this strike after Pearl Harbor." A reference to paragraph 21 of respondent's own complaint (R. 10) will show this is not true. According to its own complaint, as early as December 6th, H. H. Best, superintendent of respondent railroad, wrote a letter in which he stated that he understood a strike vote had at that time already been taken by the employees. Furthermore, respondent on the same day received a wire from the National Mediation Board advising them that the employees would withdraw from service on December 9th (R. 10).

Respondent further states that the employees did not withdraw their strike notice after Pearl Harbor. Witness Sprague, attorney for respondent, testified (R. 787):

"The strike was postponed by the Brotherhoods, and as far as I know, it was because of the request of the Mediation Board."

Respondent's own complaint shows it provoked this strike (R. 11) by sending on December 20, 1941, an ultimatum to the employees that the railroad's own schedule of wages and working conditions would go into effect on December 29th, 1941, at 12:01 a. m.

It was after this that the Mediation Board wired the railroad (R. 791) on December 28th advising that the employees had agreed to arbitrate the disputes and requesting it to arbitrate. The railroad replied (R. 790) that it refused to arbitrate. This left the employees no alternative but to accept the railroad's terms or to withdraw from service. This provoked the strike.

On page 5 respondent states that a delivery of freight was prevented on December 29th, 1941, because of threats of violence. The record reference made to support this statement shows that an objection to this testimony was sustained because it was admitted by the witness to be hearsay (R. 590).

On pages 5 and 6 respondent states on January 2nd a cut of cars was not delivered by the Burlington Railroad because of threats of violence. The record shows that the yardmaster, who was on the Burlington train, stopped at Main street in East Peoria when he saw a group of men. He then spoke to Mr. Newdigate, to get a definite statement as to whether he could pass (R. 599). Newdigate's reply was, "Mr. Marts, you know what happened this morning. I cannot say for the rest of these men. I can only speak for myself, and there may be danger for you or some of your men." Marts further testified that (R. 600) there was no evidence of any animosity against the train.

crew. There was no show of any threat of violence toward the crew. On the contrary, he said they could pass the picket line with their light engine, and return to the other end of the string of cars. Furthermore, delivery was made the next day without incident (R. 598).

Respondent makes several other statements which seem to challenge statements of facts made by us. We do not believe it necessary to take issue with them because the facts are unimportant so far as the issues here are concerned and a reference to our statements would be a mere repetition.

III.

Respondent tries to make an additional argument in support of the original jurisdiction of the District Court to hear this cause as one arising under the laws of the United States. The new cases cited merely go to the proposition that Congress has the constitutional power to legislate in the field of interstate commerce and any state legislation interfering with interstate commerce is invalid. Respondent has not answered and cannot answer the question raised by us in our briefs and asked by this Court on oral argument:

“On what Federal Statute do you rely?”

No Federal Statute has been cited and none can be cited by respondent which gives them the right of action it here seeks to enforce, i. e., the right to operate its business free from violence. This is a state given right and its case arises under state law and not under the laws of the United States.

Respectfully submitted,

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